

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 99-739

February 18, 2000

CENTRAL MAINE POWER COMPANY  
AND CMP NATURAL GAS, L.L.C.,  
Request for Approval of Affiliated Interest  
Transaction, Sale of Assets (Property)

ORDER

Chairman Welch; Nugent and Diamond, Commissioners

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## I. SUMMARY

We approve the agreements between affiliates Central Maine Power Company (CMP) and CMP Natural Gas, L.L.C. (CMPNG) to allow the transfer of property rights and the shared use of CMP's electric corridor in Westbrook necessary for CMPNG to serve the Calpine electric generation facility. We will keep open this docket to consider further whether we should alter the price paid by CMPNG to CMP for use of the right-of-way.

As a condition of our approval, we direct CMP and CMPNG to undertake three specific business practices to ensure that the future dealings between these affiliates, will not be unfair, or perceived to be unfair, with respect to non-affiliated natural gas pipeline competitors seeking to use CMP's electric corridors.

## II. BACKGROUND

The purpose of this proceeding is to review the proposed agreements between public utility affiliates, CMP and CMPNG, for the sale of easements to CMPNG and for the use of CMP's electric corridor in Westbrook for natural gas pipeline facilities to serve the Calpine electric generation facility. We must determine whether the proposed agreements are, or are not, "adverse to the public interest." 35-A M.R.S.A. §707. In so doing, we will review whether the affiliates engaged in inappropriate or anti-competitive practices.

This proceeding follows a related case, Docket No. 99-477, in which we granted CMPNG authority to provide service to the Calpine electric generation facility in Westbrook and to provide general service within the adjacent municipality of Gorham. *CMP Natural Gas, L.L.C., Petition for Approval to Furnish Gas Service in the Municipalities of Westbrook and Gorham* (§2105) and *Central Maine Power Company and CMP Natural Gas, L.L.C., Request for Approval of Affiliated Interest Transaction, Sale of Assets (Property)*, Order (Dec. 13, 1999) (December 13<sup>th</sup> Order).<sup>1</sup> Northern Utilities, Inc. (Northern), a local distribution company (LDC) that is currently serving in Gorham and Westbrook, vigorously contested CMPNG's application for service authority and alleged that inappropriate affiliate dealings between CMP and CMPNG harmed Northern's efforts to compete.

Consequently, we stated that we would further review the affiliated interest transaction between CMP and its affiliate, CMPNG, for access to and use of CMP's electric corridor necessary to serve the Calpine facility, to determine whether the dealings between these affiliates were appropriate and competition for access to and

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<sup>1</sup> These proceedings overlapped to some extent so some of the initial rulings bear both docket numbers.

use of the electric utility right-of-way (ROW) was fair. *Id.* at 37. In particular, this review further evaluated whether the actions of these CMP Group affiliates were in any way competitively unfair to Northern as alleged in Docket No. 99-477. CMP, a key participant in the negotiations for use of the electric corridor, is now a party to this case. We incorporated the record in Docket No. 99-477 into Docket No. 99-739 to avoid the need to duplicate evidence already provided and to facilitate further review of competitive fairness and affiliate dealings issues.

Finally, we indicated that we would consider “whether it is desirable to open a proceeding to consider the issues surrounding affiliate access to public utility corridors in a broader context.” See *Order* at pgs. 36-37.

Both affiliates (CMP and CMPNG) are applicants for approval in this case; Northern opposes the application. Other participants in both dockets included other natural gas pipeline and distribution companies that provide service and/or have facilities located in Maine: Bangor Gas Company, L.L.C. (Bangor Gas) and Maritimes & Northeast Pipeline, L.L.C. (MNE). Both Bangor Gas and MNE participated to advocate for fair and open access for natural gas suppliers to CMP’s electric corridors. The Office of the Public Advocate (OPA) also participated actively.<sup>2</sup>

The record in this case consists of the record in Docket No. 99-477; prefiled written testimony; the depositions of Messrs. Michael D. Petit, P. Malcolm Jarvis, John Flumerfelt, and Thomas G. Quine in their entirety; all hearing transcripts and exhibits; all responses to Advisory Staff Data Requests; and any other items formally admitted into the record by the Hearing Examiner during the course of this proceeding.

In addition, the motions of Northern to admit late-filed exhibits Oral Data Requests #01-01, 01-02 and supplemental response, and 01-03 and of OPA to admit the response to OPA-02-05 are granted without objection.

### III. LEGAL STANDARDS

#### A. Section 707: Affiliated Interest Transactions

This case presents for our review several contractual arrangements made between CMP and CMPNG for access to and use of the CMP corridor. These include the Assessment Agreement executed in October 1998 and its amendment in April 1999 to extend to the corridor at issue in this proceeding, as well as the five agreements detailing the terms of sale and use of the CMP corridors to or by CMPNG.

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<sup>2</sup> The City of Westbrook intervened but did not participate.

Section 707(3) of Title 35-A states:

No public utility may ...make any contract or arrangement for the furnishing of management, supervision of construction, engineering, accounting, legal, financial or similar services, or for the furnishing of any service or real or personal property other than those enumerated with any affiliated interest until the commission finds that the contract or arrangement is not adverse to the public interest and gives the contract or arrangement its written approval.

Subsection G of §707(3) also requires the Commission to determine the value of utility facilities, services or intangibles when a contract or arrangement involves their use by an affiliated interest. Chapter 820 of the Commission's Rules establishes that the value of intangibles (other than good will) transferred from a utility to its affiliate is the market value of the intangible. Ch. 820 (4)(D).

In addition, Chapter 820 contains Standards of Conduct that require a utility to provide information equally to affiliated and non-affiliated companies and forbids a utility to "act in preference to its affiliate or affiliates in providing access to utility facilities or in influencing utility customers to use the services of its affiliates." Ch. 820(8)(C).

B. Section 1101: Sale of Public Utility Property

This transaction also involves the sale and encumbrance of CMP's electric transmission right-of-way to allow CMPNG to construct, operate, and maintain a natural gas pipeline system serving the Calpine generation plant. The pipeline route from the interstate pipeline to the Calpine plant follows the CMP corridor.

A utility must obtain Commission approval for the sale, lease or encumbrance of utility property necessary or useful in the performance of its duties to the public. 35-A M.R.S.A. § 1101(1). The utility does not require approval if the property at issue does not materially affect the ability of the utility to perform its duties to the public. 35-A M.R.S.A. §1101(4).

C. Stipulation

Finally, we consider a stipulation executed by CMP, CMPNG, and the OPA. Generally we will accept a stipulation as the resolution of a case before us only where we conclude:

- 1) that the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) that the process that led to the stipulation was fair to all parties;

- 3) that the stipulated result is reasonable and is not contrary to legislative mandate. See *Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II)*, Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design), Docket No. 95-052*, Order (Me. P.U.C. June 26, 1996); and
- 4) that the overall stipulated result is in the public interest. See *Northern Utilities, Inc., Proposed Environmental Response Cost Recovery, Docket No. 96-678*, Order Approving Stipulation (Me. P.U.C. April 28, 1997).

#### IV. STIPULATION: DESCRIPTION AND ANALYSIS

On January 12, 2000, the OPA, CMP, and CMPNG jointly filed a stipulation proposed to resolve this proceeding. The filing indicates that Northern opposes the stipulation, and BGC and MNE take no position on the stipulation.

On January 13, 2000, the Hearing Examiner denied the stipulating parties' request to suspend the briefing schedule and stated that the Commission would consider the proposed stipulation along with the merits of this case at its scheduled deliberations.

##### A. Stipulation Provisions

The following is a summary of the substantive provisions of the Stipulation:

- 1) There is no evidence that Calpine's decision to contract with CMPNG resulted from any inappropriate affiliate dealings or was influenced by the corporate relationship of CMP and CMPNG. Calpine's selection process "resulted in reasonable commercial terms and conditions."
- 2) There is no direct or probative evidence of inappropriate dealings by CMP and CMPNG or that any of their dealings were to the detriment of Northern or any party that submitted a proposal to Calpine. There is no substantial evidence that CMPNG received preferential treatment by CMP.
- 3) The proposed transaction should be approved by the Commission under 35-A M.R.S.A. §§ 707 and 1101 because the consideration, terms and conditions, for the proposed transaction are reasonable, the transaction will

result in positive benefits to the public, and the proposed transaction is not adverse to the public interest.

B. Analysis

The Stipulation presented to us here falls far short of meeting our criteria. Only three parties signed the Stipulation: OPA, CMP and CMPNG. While we have recognized in past decisions that a stipulation that does not have OPA support is unlikely to satisfy our concern that the broader public interest is being served by the settlement, OPA support does not by itself satisfy our concern that all vital interests be represented. The party claiming to be harmed by the alleged misdeeds here – Northern – vigorously opposes the stipulation. Moreover, neither of CMPNG's other competitors – Bangor Gas and MNE – has joined. In these circumstances, it would do violence to due process merely to accept, as the final outcome of this case, a conclusion preferred by CMP, CMPNG, and OPA, without a thorough review of the evidence. As a practical matter, the stipulation provides a useful statement of certain aspects of CMP and CMPNG's position, and indicates the support of the OPA for those aspects. It does not excuse us from our unfettered consideration of the evidence presented by all parties.

V. **POSITIONS OF THE PARTIES**

A. Northern Utilities, Inc.

Throughout Docket No. 99-477, Northern alleged that affiliated dealings between CMP and CMPNG created an unlevel playing field in the competition to obtain Calpine's Westbrook generation facility as a customer. In particular, Northern charged that CMP may have afforded its affiliate, CMPNG, preferential treatment in gaining information about and access to the electric corridor that is essential to serving the facility. Ultimately, we found no clear evidence of such preferential treatment in Docket No. 99-477 and granted CMPNG authority to serve the facility, but found that further review of the affiliate dealings in this docket would be warranted, in part because CMP was not a party to the earlier case.

In this proceeding, Northern maintains that new evidence reveals that CMP employed, and subtly communicated to Northern, a policy discouraging the use of its electric corridors by other utilities for parallel facilities while simultaneously encouraging its own affiliate's use of the corridor. Northern cites the ease with which CMPNG achieved assurance of access to the corridor and reached a sale price as clear evidence that CMP treated CMPNG preferentially.

B. OPA

The OPA investigated two questions:

- Had CMP and CMPNG attempted to hamper other gas companies from getting access to the CMP ROW? For example, had CMP provided information about its ROW to its affiliate but not to other competitors?
- Did CMP and CMPNG make any attempt to induce Calpine to select CMPNG to build the lateral in order to gain preferential treatment for electric transmission from CMP?

The OPA concluded that there was insufficient evidence upon which to base an affirmative response to either question. The OPA observed that

[w]hile there are troubling aspects to the interaction between these affiliated companies with respect to the use of the Calpine right-of-way, none are of sufficient significance to cause the Public Advocate to oppose the application.

C. CMP and CMP Natural Gas, L.L.C.<sup>3</sup>

CMP and CMPNG argue that there is no evidence supporting the allegations that Northern received discriminatory treatment from CMP that hampered Northern in the competition to serve Calpine. They contend that CMP personnel responded appropriately to Northern's general inquiry and would have been responsive to an explicit request from Northern to obtain access to the Calpine ROW had it made one. Further, they claim that the Assessment Agreement was "irrelevant" to the competition to serve Calpine since it was executed after the bids were submitted. They also note that Northern's agent, Mr. Flumerfelt, was familiar with Assessment Agreements from his work with the Portland Natural Gas Transmission System (PNGTS) and that other competitors, such as MNE, did not require an Assessment Agreement to prepare their bids. Moreover, they argue that Northern's allegations of harm ring particularly hollow because its management chose not to submit a bid to Calpine, opting instead to submit one on behalf of Granite State Gas Transmission Company (Granite State), Northern's affiliate.

With respect to the price paid by CMPNG, CMP argues that the purchase price for its sale of property rights to CMPNG is comparable to prices received from unaffiliated natural gas pipelines in similar transactions and the terms of the agreements

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<sup>3</sup> CMP and CMPNG filed a "Joint Statement of Facts" (essentially a joint brief) as well as separate briefs. Because they presented a consolidated position on some issues and their positions on their joint application are otherwise generally similar, we report them here together.



are largely the same as its contracts with non-affiliates or more stringent. Last, CMP argues that there is substantial public interest in approving the transactions because it retains Calpine's competitive choice, fulfills the competitive policy adopted by the Commission, and serves the public interest by furthering a beneficial electric generation project.

D. Maritimes & Northeast Pipeline, L.L.C.

MNE states that it advocates a policy in which inter-affiliate transactions do not give the utility's affiliate an unfair competitive advantage and urges us to conduct a broader proceeding to ensure equal access to, and appropriate use of, utility corridors to benefit the development of Maine's emerging competitive natural gas market. MNE urges us to carefully review the reasonableness of the price paid by CMP's affiliate and recommends that we reaffirm the principle expressed in previous rulings that "transactions between affiliates should be conducted at arms-length to ensure fairness and *the appearance of fairness* to all parties." MNE Brief at 2.

E. Bangor Gas Company, L.L.C.

Like MNE, Bangor Gas supports "fair and open access to CMP corridors by non-affiliated entities" and takes no position on the merits of Northern's allegations in this case. Bangor Gas notes that because the Assessment Agreement allows for the provision of services, it does require approval when executed between affiliates. However, Bangor Gas suggests that, given the standard nature of the document, the Commission should consider exempting an approved standard form agreement from further review and approval pursuant to 35-A M.R.S.A. §707(C) or perhaps delegating the reviews to staff.

Finally, Bangor Gas suggests that the Commission exempt from section 1101 scrutiny transactions relating to the utility's right-of-way corridors, and substitute a requirement that the utility certify that the transaction does not materially affect the ability of the utility to perform its duties. See Section 1101(4).

## VI. ANALYSIS

We recently expressed our general concern over dealings between affiliates:

We remind the Company that transactions with affiliates should be conducted at arms length to ensure fairness and the appearance of fairness to all parties. (emphasis added).

See *Central Maine Power Co., Petition for Approval of Affiliated Interest Transaction with Union Water Power Company for Underground Facilities Location Services, Dkt. No. 97-165, Order (Apr. 15, 1997)*. This admonition assumes renewed importance in an emerging competitive industry like natural gas distribution.

This case presents three principal questions for analysis: (1) Did CMP treat CMPNG in the same manner it would have treated a non-affiliate? (2) If not, was the treatment of CMPNG preferential, resulting in harm to the public interest generally or to Northern in particular? and (3) Was the price CMP charged CMPNG reasonable?

A. CMP's Interactions with CMPNG

There are suggestions in the evidence of a closer relationship between CMP and CMPNG than one would expect for non-affiliated firms.

During Mr. Clark's tenure as CMP's project manager for the Calpine lateral, he and Mr. Quimby of CMPNG had adjoining offices on the fourth floor of CMP's corporate headquarters on Edison Drive. These offices were separated only by movable partitions rather than permanent walls. Apparently, from time to time they would communicate with one another by speaking over the partitions. Also, depending on the level of ambient noise, it was possible for someone in one office to listen to a conversation in the other.

Mr. Clark testified that he was careful not to discuss sensitive issues, such as CMP's pricing strategy for the Calpine lateral, if he thought Mr. Quimby might be able to overhear the conversation. However, it remains troubling that CMP's lead person in negotiating the easement agreement with CMPNG would have an office which was not only adjacent to the office of a CMPNG officer directly involved in the same negotiations but which also did not allow for certainty that conversations in one office would not be overheard by the occupants of the other office.

Furthermore, Mr. Quimby testified that in addition to his duties for CMPNG, he also spends a portion of his time working as a strategic planner for CMP Group keeping track of changes in the electricity and energy industries. CMP is a wholly-owned subsidiary and CMPNG is a partially-owned subsidiary of CMP Group. Presumably Mr. Quimby's work is valuable to CMP Group because it informs decisions which CMP Group and/or CMP might make regarding the strategic planning of CMP, CMP Group's primary operating company and only electric utility. In such circumstances, it might be difficult for Mr. Clark, or other CMP employees involved with negotiating the Calpine ROW, to consider Mr. Quimby with the same sense of independence that they might view, for example, Mr. Cote of Northern when he inquired about CMP's policies on allowing an unaffiliated LDC and competitor of CMPNG use of CMP land.

Other recent events further reveal the close relationship between these two firms. On September 24, 1999, in Docket No. 99-477, Arthur Adelberg, Executive Vice President of CMP Group wrote a letter to the Commissioners individually expressing a number of opinions, particularly his concern that Northern was using the

CMPNG certificate proceeding<sup>4</sup> to “drive CMP Natural Gas from the market.” While the merits of Mr. Adelberg’s arguments are not at issue here, the fact that he both spoke in CMPNG’s defense and enlisted the help of Mr. A. Lawrence Ralph, a Senior Counsel at CMP, to assist in drafting the letter is revealing. Mr. Ralph was the legal counsel representing CMP in negotiating the contract with CMPNG.<sup>5</sup> The message to Mr. Ralph, that senior management at CMP Group had a strong interest in CMPNG’s serving Calpine, must have been quite clear.<sup>6</sup>

Another incident that suggests a close relationship between these affiliates occurred during June 1999 while the affiliates were negotiating the ROW sale, when Mr. Kelley of CMPNG reviewed his project budget (including the amount CMPNG proposed to pay CMP for the ROW) with Mr. Adelberg, an officer of the parent corporation for both CMP and CMPNG.

Finally, on November 24, 1999, CMP and CMPNG filed for approval of an Easement Agreement under which CMPNG would build a metering and regulation station on land owned by CMP.<sup>7</sup> While this transaction is currently under review in a separate docket, it is noted here because it is apparent from the filing that CMP allowed CMPNG to construct the facility prior to either reaching final agreement with CMPNG over the use of the property or obtaining Commission approval. While CMP states in the application that this was merely an oversight, it seems unlikely that a non-affiliate, such as Northern, would have been allowed to construct a similar facility without first negotiating and signing a contract that granted it rights to do so.

These episodes and circumstances, taken together, suggest something closer than arm’s-length dealings between CMP and CMPNG. If only to reduce the appearance of unfairness to CMPNG’s competitors, some modifications in their handling of business matters are clearly warranted. CMP should establish a consistent and publicly-released procedure by which entities can acquire access to CMP’s corridors for large-scale projects, such as placement of natural gas pipelines. While the described dealings convey an appearance of unfairness, however, as we discuss

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<sup>4</sup> *CMP Natural Gas, L.L.C., Petition for Approval to Furnish Gas Service in the Municipalities of Westbrook and Gorham, Docket No. 99-477.*

<sup>5</sup> Mr. Ralph’s office is also on the fourth floor of the Edison Drive building in the same vicinity as the offices of Mr. Quimby and Mr. Clark (until he left CMP).

<sup>6</sup> Paradoxically, Mr. Adelberg’s letter also strongly argued that CMP and CMPNG were independent companies and criticized Staff for inappropriately blending their identities by issuing a data request to CMP, which was not party in Docket No. 99-477.

<sup>7</sup> *Central Maine Power Company and CMP Natural Gas, L.L.C., Application for Approval of Affiliated Interest Transaction for Windham M&R Station, Docket No. 99-846.*

below, we do not find that the behavior amounted to unlawfully preferential treatment for CMPNG.

B. Not Adverse to the Public Interest

Utility actions giving preferential treatment to an affiliate in providing access to utility facilities are forbidden by Chapter 820(8)(C). However, for preferential treatment to occur, there must be more than one entity involved; in other words, CMPNG must have been preferred over some other entity before we can conclude that there was a violation. The record does not support a finding that CMP gave preference to any entity over another in the sale of its right-of-way in this instance.

Northern has argued throughout this proceeding and Docket No. 99-477 that it was harmed because, but for CMP's preferential treatment of its affiliate, it (or one of its affiliated companies) would have been awarded the contract with Calpine and been granted an easement to build a lateral along the corridor.

There has been extensive evidence of Northern's pursuit of the Calpine contract in Docket No. 99-477, in the depositions of Mr. Petit, who represented Calpine in its negotiations over the lateral, and of Mr. Flumerfelt, who worked for Northern and its affiliates (the Bay State family of companies, i.e. Northern, Granite State, PNGTS, and Bay State Gas Company, an LDC serving Massachusetts). In his efforts on behalf of Calpine to have the lateral constructed, Mr. Petit made a conscious decision to solicit as much competition for that project as possible. Mr. Petit testified that he solicited a proposal from the Bay State family of companies on more than one occasion but that Northern/Granite State<sup>8</sup> indicated that it did not have the internal resources to develop a detailed proposal and asked Calpine to fund the development of such a proposal. After Calpine declined, Granite State finally did submit a proposal that Mr. Petit characterized as not comprehensive or well advanced.<sup>9</sup>

Thus, it appears clear that the primary reason Northern failed to win the Calpine lateral contract was that its management did not aggressively pursue the lateral project. Beyond that, the Bay State family was not able to convince Mr. Petit that any of its affiliates was the best choice for Calpine. Moreover, according to Mr. Petit, if he had

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<sup>8</sup> Because most of the individuals who prepared the Calpine bid worked on behalf of both Northern and Granite (i.e. Messrs. DaFonte, Simpson, MacDonald, and Flumerfelt), we will consider Northern's arguments applicable to both Granite and Northern. Further references to Northern in this report are intended to include Granite by implication.

<sup>9</sup> PNGTS submitted a proposal on its own behalf, independent of Northern or Granite State. PNGTS has not intervened in this proceeding, and the evidence does not suggest that it felt disadvantaged in any way by the events about which Northern complains.

not selected CMPNG for the Calpine contract, he would have awarded the contract to a bidder other than Northern or its affiliates.

Northern next claims that CMP discouraged it from trying to obtain access to the ROW. The evidence fails to support that claim. A single desultory inquiry by Mr. Cote of Northern to Mr. Grover of CMP cannot form the basis for concluding that CMP would not, in fact, have allowed Northern an easement for this particular ROW. If, as Northern asserts, Mr. Cote believed that CMP was asking for an unreasonable amount of information, he could have made at least some effort to get this reduced to a reasonable level.

We recognize that Northern may have had a pessimistic and wary mindset as a result of its knowledge of PNGTS's difficulties negotiating access to CMP's corridors. We also recognize that its pessimism may have been compounded generally by CMP's close affiliation with Northern's vigorous competitor, CMPNG. It is understandable in that context that Northern would proceed cautiously, keeping from CMP the location of the ROW in which it was interested when it did not appear it could gain access to the corridor in a meaningful period of time.

The communication between Northern's Cote and CMP's Grover suggests the restraint and caution that each party may have felt in addressing the other about the availability of the Calpine ROW.<sup>10</sup> In the final analysis, however, Northern's passive approach to securing the right-of-way is difficult to understand. If it genuinely felt that it would encounter resistance from CMP, a more, rather than less, aggressive strategy would seem to have been warranted, not only to improve its chances of success with CMP, but also to build a record of discrimination if its overtures were rebuffed for what it believed were inappropriate reasons.

On balance we cannot find that CMP's actions were intended to discourage Northern's use of its ROW. Nor can we conclude, based on the evidence surrounding that single telephone call, that Northern made a sufficiently direct effort to prompt CMP to undertake a more active response. Rather, Northern's effort here appears quite similar to its equivocal pursuit of the Calpine contract itself. We can only conclude that, while Northern may have been wary of the possibility of preferential treatment by CMP of its affiliate CMPNG, given its own managerial actions, Northern was not actually harmed by the treatment it received from CMP, or by the character and substance of the dealings between CMP and CMPNG. There was no "preference" because, at least from CMP's perspective, Northern and CMPNG were not seeking the same thing.

Nor is there evidence that the competitive process was adversely affected by the affiliate dealings between CMP and CMPNG. No other bidder or entity has

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<sup>10</sup> Mr. Grover presumed that Northern was very likely considering use of CMP's ROW in Westbrook to serve Calpine but did not confirm this with Mr. Cote.

alleged harm from inappropriate affiliate dealings between CMP and CMPNG in the course of this competition.

Moreover, using our regulatory authority to put Northern in a better position than its competitive actions merit or to unnecessarily jeopardize the timely provision of service to Calpine would defeat the purpose of our public interest oversight. Regulatory remedies should be reserved for instances of actual harm or to reverse practices which clearly contravene the public interest. Our forum should not be a substitute for genuine competition.

Accordingly, we find that the proposed transaction between CMP and CMPNG is not adverse to the public interest.

Nevertheless, the pattern of affiliate behavior we have identified raises serious concerns about the appearance of fairness. We have clearly stated our policy of encouraging competition among gas LDCs in the large portion of the state where natural gas distribution service does not currently exist. For this policy to work effectively, all competitors and potential competitors need reasonable assurance that they are equally able to use existing rights of way to site new gas facilities. In fact, in addition to Northern, both Bangor Gas and MNE have participated in this case based on a general concern over fair and equal access to electric corridors.

The behavior of CMP and CMPNG convinces us of the need for greater separation between CMP and CMPNG, particularly when dealing with the availability of CMP property and information to CMPNG. We believe these problems should to some extent be addressed immediately to ensure that confidence in the existence of a "level playing field" can be restored quickly.

Our existing rule governing affiliated interest transactions, Chapter 820, prohibits preferential treatment by a utility of its affiliate. It also requires that information provided to an affiliate be provided to non-affiliated companies on request. It does not provide specific requirements for separation between the utility and its affiliate as set forth in section 3205 of Title 35-A and Chapter 304 of our rules. Therefore, Chapter 820 may currently be inadequate to deal with the situations such as this in which a utility has such direct involvement in one aspect of the competition between one of its affiliates and other unaffiliated companies.

Chapter 304 of our Rules, "Standards of Conduct for Transmission and Distribution Utilities and Affiliated Competitive Electricity Providers," provides the closest measure of appropriate competitive behavior for utilities, but because it is limited to competitive electric suppliers and their transmission and distribution affiliates, it is not directly applicable to this situation.

Ultimately, we must consider whether Chapter 820 should be modified to include provisions similar to those existing in Chapter 304. However, the evidence of affiliate dealings in this case indicates a need to impose conditions to protect the public

interest. 35-A M.R.S.A. § 707(3)(B). Thus, we condition our approval on the requirement that CMP and CMPNG implement the following competitive safeguards:

- CMP must develop and make known a uniform and open process for entities to obtain access to and property rights in its electric corridors;
- CMP and CMPNG must physically separate their respective employees from one another; and
- CMP and CMPNG must submit for Commission review, within 21 days of this Order, their proposal as to how they will fulfill these conditions.

C. The Price of the Right-of-way

The price charged by CMP for the sale of the right-of-way to CMPNG is important for two reasons. First, the price may have an impact on the overall rates charged to CMP's electricity customers. Second, and equally important in a case where preferential treatment is alleged, an unreasonably low price or an unusually lax attitude toward negotiating a higher price could be taken to suggest that a discounted selling price was given to the affiliate. A discount would strengthen the affiliate's general financial condition and could give the affiliate an unreasonable competitive advantage over other firms, thereby harming competition in natural gas distribution. Finally, we are directed by statute to ensure that the price paid is the "market price." 35-A M.R.S.A. § 707 (3)(G).

Chad Clark was the CMP project manager who worked with CMPNG on its request for use of the Calpine lateral. In June 1999, Mr. Clark left CMP to work for E/Pro, a now unaffiliated engineering and consulting firm established by a group of employees who previously worked for CMP. At E/Pro, he continued to serve as a consultant to CMP with regard to the lateral. Mr. Clark testified that he became aware the amount CMPNG has budgeted for the ROW from CMPNG's Vice President, Darrell Quimby, sometime on or before March 1<sup>st</sup> when CMP initiated a more formal process for allowing CMPNG access to the ROW. During this time, Mr. Clark and Mr. Quimby had adjoining offices, separated only by movable partitions, at CMP's corporate headquarters.

The ROW sale agreements before us were executed October 12, 1999 and cover a right-of-way of 1.86 miles. CMP charged CMPNG a price that was precisely the ballpark figure that Mr. Clark understood to be the budget of CMP's affiliate, CMPNG.<sup>11</sup> The fact that CMP charged CMPNG precisely its budgeted amount

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<sup>11</sup> Mr. Quimby subsequently testified that he mentioned this figure not as CMPNG's budget, but as a figure to be used in helping one of CMPNG's alliance partners, Cianbro, to prepare its own bid to construct the Calpine lateral. Mr. Quimby further testified that he did not tell Mr. Clark or others at CMP that he was inquiring on

for the right-of-way does not, in itself, prove that the price was unreasonable or that preferential treatment occurred. It does, however, suggest that we should consider the reasonableness of the price more fully.

CMP justifies the price by comparison to the prices it received for other recent rights-of-way sales to natural gas pipelines. Of course, such comparisons must take into account various differences among the transactions. For example, Kenneth Freye, the Manager of CMP's Property Management Department, testified that he also considered the completeness of the rights granted, the width and length of the easement, the size of the pipe, the amount of clearing needed, and the value of abutting land. These attributes are reasonable considerations in determining the value of the easement, although difficult to quantify. Other relevant considerations, such as the extent to which CMP would be reimbursed for its inspector costs, are easier to quantify.

CMP compares this right-of-way sale to three other transactions involving sales of its electric corridor property rights to natural gas pipelines: 1) the MNE pipeline (extending from South Portland north to New Brunswick); 2) PNGTS (extending from South Portland west to Quebec); and 3) the Joint MNE/PNGTS Facilities (extending from South Portland south to New Hampshire). Of these three, the PNGTS sale price was substantially lower because CMP did not own full property rights for a significant portion of the distance (i.e. CMP owned an easement rather than property in fee.) Advisory Staff calculated the average prices per mile for these other ROW sales, net of selling costs and unreimbursed inspector costs, and determined that the net proceeds of this deal to CMP are the lowest of the four sales.

The record also indicates that CMP was not particularly aggressive in placing itself in a position to bargain for a higher price. In particular, in accepting Mr. Quimby's suggestion that the value for this ROW should be set based on the price received for the other easements, CMP apparently chose not to consider some of the reasons this specific right-of-way might be particularly valuable.

For example, the other three ROWs are relatively long and provide essentially a common carrier function, delivering gas to multiple buyers and competing against other pipelines that provide a similar service. However, this ROW will be used as a dedicated lateral delivering gas to a single large electric generator. It is not clear that the value of ROWs for these two purposes would be the same.

In Maine and New England, there are a number of new gas-fired generation plants in various stages of planning and construction. Based on our general knowledge of these plants, they are often located in close proximity to both gas pipelines and the existing electric transmission grid, particularly Pool Transmission

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behalf of Cianbro and that it would have been reasonable for them to have concluded that the figure was, in fact, CMPNG's budgeted amount.



Facilities (PTF).<sup>12</sup> This suggests that ROWs located near the intersection of existing electric transmission lines and gas pipelines are particularly valuable.

According to a data response, CMP accepts the general premise that easements on these corridors may be more valuable.

CMP believes transmission line corridors near natural gas transmission line corridors may be more valuable than other corridors not so situated, but only if a gas pipeline company or other entity wants to install a gas pipeline and there is sufficient room and rights to allow such installation. When these conditions exist, electric transmission lines may offer a lower cost alternative to creating a new corridor across individual landowners. When a gas pipeline company, or other entity, desires to use CMP's corridors, CMP may be able to charge a price based on the alternatives to using the corridor.

ADV-01-02.

Even though CMP believed that this ROW may have been more valuable due to its location, it apparently did not take this into account in determining the price. Similarly, while CMP also believes that the price could be increased to reflect the costs of the buyers' alternatives, "CMP did not consider CMPNG's alternative routes" or the cost of alternative routes.

However, CMP also noted several reasons why the easement sold to CMPNG would be less valuable than those sold to the interstate pipelines. Specifically, CMP noted that this easement was only half the width of the ones sold to the larger pipelines, and noted that the proposed facilities would transport smaller volumes of natural gas.

The Examiner's Report found that the value of the right-of-way, and thus, the selling price, should be higher. The Staff recommended that the value be increased such that the proceeds from the sale, net of CMP's selling expense, inspector expense, and a portion of the regulatory expense, would be no lower than the comparable proceeds from the lower-priced analogous right-of-way sale. CMP and CMPNG took exception to the Staff's recommendation, arguing that the gross sales price, net of inspector expense but not selling expense, is the proper basis to determine market value.

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<sup>12</sup> PTF transmission is the high voltage backbone of the New England transmission grid. It is generally advantageous for new generators to interconnect directly to the PTF system to avoid paying local transmission charges in addition to any PTF related charges.

We will make a final determination on the question whether the negotiated sales price constitutes market value after we receive further written comments on this issue. The statute allows us to take up to an additional 60 days following our approval of the transaction to establish the proper value. 35-A M.R.S.A. §707(G).

In light of all the circumstances here, however, we cannot conclude that the price paid by CMPNG – even if it is below the market price, and thus must be adjusted pursuant to section 707(3)(G) – represents a preference given to CMPNG, or otherwise provides a basis for denying the application. Once again, the failure of Northern or any other party even to discuss price with CMP, even though all clearly has the opportunity to do so, precludes any finding that CMPNG received a “more favorable” price than its competitors by virtue of its affiliation.

## **VII. SECTION 1101 AUTHORITY FOR SALE OF UTILITY PROPERTY**

CMP witness Lee Blake described the CMP corridor on which facilities to serve the Calpine facility are proposed to be located as a “critical” corridor. This means that it is one of a limited number of routes to provide additional electric transmission facilities to serve the growing electric load of the southern Maine region. This fact suggests that it is critical to review whether CMP can reasonably sell a portion of the easement to locate a gas pipeline without impacting its future plans and the public necessity for use of this corridor for electric facilities. Mr. Blake testified that the placement of the gas pipeline allows CMP room for an additional 115 Kwh transmission line that should be adequate for CMP’s future needs. No party contested this assertion. Consequently, we approve the sale of this portion of the ROW pursuant to section 1101.

## **VIII. ASSESSMENT AGREEMENTS**

In our December 13<sup>th</sup> Order in this proceeding, we found that the Assessment Agreement between CMP and CMPNG executed in October 1998 and its amendments constitute arrangements between affiliates for the provision of services and require our approval pursuant to 35-A M.R.S.A. §707(3). December 13<sup>th</sup> Order at 30. We further stated that we saw no justification as to why either or both utilities did not file the Agreements with us for review and approval and directed the Hearing Examiner to issue an order requiring CMP and CMPNG to show cause why they should not be subject to sanctions for this omission.<sup>13</sup> We also directed parties to pursue further in this case the question of whether it may have been a tactical decision on CMP and/or CMPNG’s part not to do so.

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<sup>13</sup> In Docket No. 99-477, Northern alleged that the affiliates’ failure to file these agreements constituted conscious, anti-competitive behavior.

CMP's Supplemental and Second Supplemental Prefiled Direct Testimonies of Mr. Kenneth H. Freye describe the Assessment Agreement generally and the process leading to the execution of such agreements. Freye explained the basic nature of the Assessment Agreement as primarily a vehicle to release and indemnify CMP and to provide that CMP will be reimbursed for costs it incurs. CMP's participation in the evaluation of projects proposed for its corridors is to ensure that another entity's proposed use of the electric corridor would not adversely impact CMP's present and future use of the corridor for electric purposes. CMP requires all entities, whether affiliated or not, to execute such an agreement prior to detailed investigation of its corridors.

CMP argues that the agreements do not require CMP to perform services for pipeline companies, but rather ensure that if CMP chooses to provide advice or perform analysis, its costs will be recovered from the entity seeking to use the corridor. Consequently, Mr. Freye testified that he did not believe the agreements required Commission approval pursuant to section 707.<sup>14</sup>

Northern alleges that, had CMP and CMPNG submitted the initial Assessment Agreement for approval when it was first executed, Northern would have been aware of this means of gaining information about and access to CMP's corridors. Northern argues that this information would have placed it on equal footing because it could then have sought a similar arrangement with CMP. Northern further asserted that it was a tactical decision on the CMP Group affiliates' part not to reveal the existence of the agreement in order not to inform competitors of CMPNG's potential projects along CMP's corridors.

A. Analysis

CMP's explanation of the function and nature of the Assessment Agreement may help explain why it apparently did not recognize the need to file such agreements, when executed between affiliates, for our approval. However, the statutory language outlining when agreements between affiliates require prior review is broad.

No public utility may make ... any contract or arrangement for the furnishing of management, supervision of construction, engineering, accounting, legal, financial or similar services, or for the furnishing of any service or real or personal property with any affiliated interest other than those enumerated until the commission finds that the contract or arrangement is not adverse to the public interest and gives the contract or arrangement its written approval.

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<sup>14</sup> The initial Assessment Agreement executed October 1998 sets out the terms in detail whereas the April 1999 amendment simply extends the arrangement to additional ROW locations.

35-A M.R.S.A. § 707(3) (emphasis added.) CMP argues that the Agreements are not contracts for services but rather are simply arrangements that allow CMP to recover the costs of any work it does to monitor and analyze proposed projects on its corridors.

The Assessment Agreement contains the following language:

1. DESCRIPTION/WORK/SUPPORT

C. SUPPORT is defined as CMP's efforts to support CMPNG in their efforts to assess the CORRIDOR for use of the pipeline. SUPPORT includes CMP labor and expense in reviewing potential PIPELINE alignments within and uses of the CORRIDOR regarding operations, maintenance, environmental, survey, real estate issues, and associated project management, as well as investigating potential conflicts with other potential uses of the CORRIDOR. SUPPORT includes the cost to copy and transmit drawings and other information requested. SUPPORT also includes adequate field representation from CMP to protect its interests during any time CMPNG or its contractors are physically within the CORRIDOR. In addition, SUPPORT will include a CMP-hired consultant to assist in evaluating technical issues associated with mutual use of the CORRIDOR, including cathodic protection and A.C. mitigation.

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8. REIMBURSEMENTS

CMPNG will reimburse CMP for Support costs reasonably expended, as identified in section 1C... CMP will submit a monthly bill for CMPNG...

We do not find that the language of the Assessment Agreement contains a limitation to work that CMP decides, "in its sole discretion," is in its interest to perform. Moreover, while CMP asserts that the support that it provides is technical and designed to ensure that the electric uses of the corridor are not impaired, this exchange of information and supporting analysis also benefits the entity seeking to use the corridor by assisting it in developing the details of its pipeline location and specifications. The very term "support" implies active assistance, rather than passive or defensive analysis.

Consequently, we believe that an Assessment Agreement between affiliates falls within the statutory framework because it constitutes an arrangement whereby CMP will provide technical and some degree of project management services to the affiliate for compensation. Having so concluded, however, we acknowledge that

these agreements are likely to be susceptible to a largely standard form. Consequently, we find Bangor Gas's suggestion that approval could be done quickly through delegation to staff or by conformance to a Standard Form Assessment Agreement useful. We also do not believe that prior approval is necessary for amendments of the agreement that only modify the locations and/or extend the time period of the underlying agreement. Because these types of amendments do not alter the underlying support service agreement, they would not require our approval under section 707(3).

Finally, we will address Northern's contention that it was harmed in this competitive situation by CMP's and CMPNG's failure to file for our approval their original Assessment Agreement executed October 1998 and its April 1999 amendment. Northern's and Granite State's representative in developing the bid for the Calpine project, Mr. Flumerfelt, was familiar with CMP's use of Assessment Agreements to allow an entity to evaluate the use of its corridors for natural gas facilities.<sup>15</sup> However, he may not have been aware that CMPNG had entered into an Assessment Agreement for certain corridors (and eventually this corridor). Moreover, consistent with the treatment accorded to these agreements in Docket No. 99-477, in this competitive environment, the specific locations to which the agreements apply warrant confidential treatment. In that regard, Northern would not have been entitled to know through regulatory means what CMP corridors CMPNG was evaluating. It would have known only the general terms of the affiliate's access and the fact that the affiliate had such an agreement in place.

More importantly, the record indicates that all competitors -- including Northern according to Mr. Flumerfelt -- were able to prepare and submit viable bids for the Calpine lateral without obtaining access to, or specific information about, CMP's corridors. It also appears that CMPNG did not benefit from the amended Assessment Agreement during the bidding process because it did not execute the amendment until April 22, 1999, or enter the corridor, until after bids had been submitted to Calpine.<sup>16</sup> We conclude that the omission of regulatory approval did not harm Northern in its efforts to compete for the Calpine project and find no basis on this record to find that CMP and CMPNG avoided regulatory review of these agreements as a means of anti-competitive

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<sup>15</sup> It is possible that Mr. Cote, Mr. DaFonte, and Northern's counsel were unaware of the existence of CMP's Assessment Agreements; Mr. Flumerfelt learned of them while working for PNGTS. However, because Mr. Flumerfelt led the Northern/Granite effort in developing the lateral project bid we can safely conclude that he would have made use of his knowledge had he deemed it useful.

<sup>16</sup> CMP and CMPNG witnesses testified that CMPNG did not enter onto CMP's Westbrook corridor prior to executing the Assessment Agreement on April 22, 1999.

strategy. Thus, we see no competitive disadvantage to Northern from CMP and CMPNG's failure to obtain regulatory approval in October 1998.<sup>17</sup>

We also do not find persuasive evidence that CMP and CMPNG intended to mislead competitors and decided not to bring the Agreements to us for section 707 approval in willful violation of the statute and as anti-competitive strategy. CMP's explanation that it viewed Assessment Agreements not as contracts for services but rather as vehicles for indemnification and reimbursement, though not wholly correct, is plausible enough to excuse the omission.

We further note that erring on the side of caution in such matters will save CMP Group resources and build good will through conformance with regulatory requirements aimed at protecting both competitors and the public trust and by projecting a demeanor of openness and fairness. The current mode of operation simply invites distrust and allegations such as those raised by Northern.

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<sup>17</sup> Whether CMPNG unreasonably withheld the Assessment Agreement from Northern during the litigation of Docket No. 99-477 is pending further review in that docket.

**IX. CONCLUSION**

We approve the proposed agreements between CMP and CMPNG for the sale and use of portions of CMP's electric corridor located in Westbrook and necessary to serve the Calpine electric generation facility pursuant to 35-A M.R.S.A. §§ 707 and 1101. We will determine whether the negotiated price constitutes market value after we review further written comments.

Our approval is conditioned on compliance by these CMP Group affiliates with the requirements outlined in Section VI(B) above.

We will initiate a rulemaking on standards of conduct for affiliates such as these operating in a competitive market and will consider whether tariffed access to and use of electric corridors is in the public interest.

Dated at Augusta, Maine, this 18th day of February, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.



## APPENDIX A: PROCEDURAL HISTORY

On October 22, 1999, Central Maine Power Company (CMP) and CMP Natural Gas, L.L.C. (CMPNG) filed a joint application seeking approval pursuant to 35-A M.R.S.A. §§ 707 and 1101 of five agreements involved in an affiliated transaction for access, use and sale of easement rights and related matters. These agreements include: 1) CMP Closing Agreement; 2) CMP Grant of Easement and Consent; 3) CMP/CMPNG Right-of-way Use Agreement; 4) CMP Access License; and 5) CMP Maintenance Agreement. The filing also contained the pre-filed direct testimony of Kenneth Freye, Manager, Property Management for CMP. Finally, the petitioners filed a construction agreement between CMP and Cianbro Corporation (Cianbro) intended to permit CMPNG, through its contractor, to begin construction of its proposed gas pipeline facilities on the CMP right-of-way that is the subject of this transaction before winter.

On October 28, 1999, the Hearing Examiner issued a Notice of Proceeding and established a deadline for intervention in this case of November 8, 1999. Because of the interrelated nature of the cases and the urgency of the petitioners' request to be allowed to begin construction before winter, the Notice also invited the parties to Docket No. 99-477 to file comments on the petitioners' construction agreement. The OPA, Northern, MNE, and Bangor Gas filed comments objecting to allowing Cianbro to engage in construction on CMP's right-of-way on CMPNG's behalf as improperly circumventing regulatory review.<sup>18</sup>

On November 15, 1999, the Commission deliberated the proposed construction agreement and denied the request for an exemption from section 707 review to permit Cianbro to commence construction before resolution of this proceeding.

The Hearing Examiner issued a procedural order on November 16, 1999, outlining several matters for discussion at the initial case conference, including whether Docket Nos. 99-739 and 99-477 should be consolidated, the scope of issues included in Docket No. 99-739, and setting an initial discovery schedule. An initial case conference was held on November 17, 1999 at which the interventions of OPA, MNE, Northern, and BGC were granted. The City of Westbrook filed a late-filed petition to intervene on November 17, 1999. Westbrook's limited intervention was allowed by Procedural Order dated December 16, 1999.

The Hearing Examiner issued a Summary of Initial Case Conference on November 23, 1999 providing the rulings made at the initial case conference and setting certain matters, such as confidential treatment, for comment.

On November 24, 1999, CMPNG filed a Request for Expedited Reconsideration of the Commission's decision to deny its request for preliminary approval to allow early

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<sup>18</sup> The Commission had not yet authorized CMPNG to serve the Calpine facility. The Commission deliberated CMPNG's request for authority to serve Calpine's facility in Westbrook in Docket No. 99-477 on November 15-16, 1999.

winter construction of the natural gas pipeline facilities to serve Calpine. On November 29, 1999, the Commission issued a procedural order inviting comments by December 1 and setting a December 2 telephone conference with representatives of Calpine Eastern and participating Maine environmental agencies. Messrs. Michael Petit, Director of Fuel Supply, for Calpine Eastern Corporation, Malcolm Jarvis, Project Manager for the Westbrook facility, and John Boland, Regional Fisheries Biologist, Department of Inland Fisheries and Wildlife, participated in the conference and answered questions regarding the necessity for and impact of beginning construction immediately. The Commission deliberated this matter on December 3, 1999 and issued its Order (Part 1) granting CMPNG authority to begin limited construction activities on CMP's electric corridor.

On December 8, 1999, the Hearing Examiner issued Temporary Protective Order No. 2 (governing sensitive business information produced by CMP) and Temporary Protective Order No. 3 (governing NEPOOL electric transmission information) but required CMP to provide additional comment and justification for the extent of protective treatment accorded this information.

On December 13, 1999, the Commission issued an Order in both Docket No. 99-477 and in this case, Docket No. 99-739, granting CMPNG authority to serve the Calpine Corporation electric generation facility in Westbrook and to provide general natural gas service within the municipality of Gorham. *CMP Natural Gas, L.L.C., Petition for Approval to Furnish Gas Service in the Municipalities of Westbrook and Gorham (§2105) and Central Maine Power Company and CMP Natural Gas, L.L.C., Request for Approval of Affiliated Interest Transaction, Sale of Assets (Property)*, Order (Dec. 13, 1999) (December 13<sup>th</sup> Order).

On December 16, 1999, the Hearing Examiner adopted a schedule for Docket No. 99-739 that included a comprehensive 1-day hearing to investigate the dealings between CMP and CMPNG or any other entity for use of and sale of the electric rights-of-way to serve the Calpine facility.

On December 20, 1999, the Commission suspended the effective date of the agreements subject to review in this proceeding for an additional 60 days.

Also on December 20, 1999, the Commission deliberated CMP's appeal of the Hearing Examiner's Temporary Protective Order No. 2. The Commission ruled that the unique competitive circumstances warranted that sensitive business information would be distributed only to the Commission, OPA and respective staff members unless and until there was a finding by the Hearing Examiner that the information could be released to parties and/or their attorneys. The Hearing Examiner issued Revised Temporary Protective Order No. 2 on December 21, 1999.

On December 22, 1999, CMP filed the Supplemental Testimony of Kenneth H. Freye and the Direct Testimony of Lee J. Blake, Transmission Technical Coordinator for CMP.

The OPA held the depositions of Michael D. Petit, Director of Fuels Supply, and P. Malcolm Jarvis, Project Manager for Westbrook Energy facility, both of Calpine, on December 17 and 28, 1999, respectively. CMP took the deposition of John M. Flumerfelt, a former employee of Northern and its affiliates, Granite State Gas Transmission Company (Granite State), Bay State Gas Company (BSGC) and Portland Natural Gas Transmission System (PNGTS), on December 22, 1999. CMPNG took the deposition of Thomas G. Quine, President of Northstar Industries, on December 21, 1999. Depositions of witnesses for Northern and MNE were cancelled.

On January 3, 2000, CMP filed a Motion for Reconsideration/Clarification of Section 1101 Finding in the Hearing Examiner's December 16, 1999 Procedural Order.

The Commission held a conference of counsel on January 3, 2000. The last round of discovery responses were also submitted on that date. Also on January 3, 2000, the Commission issued its Order (Part II) in Docket Nos. 99-477 and 99-739 resolving scheduling and protective order issues.

The Commission held a hearing on January 5, 2000 at which the following witnesses were cross-examined: Steve Garwood, Managing Director Transmission Operations, CMP; Kenneth Freye, Manager, Property Management for CMP; A. Lawrence Ralph, Senior Staff Attorney, CMP; Lee Blake, Transmission Technical Coordinator, CMP; Stanley Grover, Line Superintendent, T & D Operations, CMP; Chad Clark, E/Pro Engineering and Environmental Consulting, L.L.C. and former Business Development Manager, CMP; Tim Kelley, President, CMPNG; Darrel Quimby, Senior Planner at CMP Group and Vice President of CMPNG; and Gary Kenny, Manager of Engineering and Operations, CMPNG. Advisory Staff questions regarding transaction costs and accounting were deferred and addressed through the exchange of further written information. See Procedural Order – Technical Conference to Determine Net Revenues issued January 6, 2000.

On January 7, 2000, CMP filed a motion to strike certain allegations made by Northern in this proceeding, seeking to obviate the need for briefing those issues. CMPNG filed supporting comments. Northern filed in opposition to CMP's motion. On January 12, 2000, the Hearing Examiner issued an Order Denying Motion to Strike but accepting CMP's motion and CMPNG's filing in support thereof as their briefs on those issues.

On January 12, 2000, the OPA, CMP, and CMPNG jointly filed a stipulation proposed to resolve this proceeding. BGC and MNE take no position on the stipulation. On January 13, 2000, the Hearing Examiner denied the stipulating parties' request to suspend the briefing schedule and stated that the Commission would consider the proposed stipulation along with the merits of this case at its scheduled deliberations.

On January 19, 2000, Northern filed a Motion to Admit as Late Exhibits the responses to Oral Data Responses 01-01, 01-02 and supplemental response to 01-02,

and 01-03. Additionally, OPA requests that the response to OPA-02-05 be entered into the record as a late-filed exhibit.

OPA, CMP, CMPNG, Northern, MNE and BGC filed Briefs on January 19, 2000. CMP, CMPNG, and Northern filed Reply Briefs on January 26, 2000. An Examiner's Report was issued on February 3, 2000. Oral exceptions were given by CMP, CMPNG, Northern, and Bangor Gas on February 8, 2000, with deliberations immediately following.

On February 8, 2000, the Hearing Examiner issued a procedural order inviting further written comment on the issue of the proper value for this transaction, due on February 18, 2000.